

ORDINANCE NO. 2001-3301

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, CREATING DIVISION 6, TO BE ENTITLED "LIVING WAGE REQUIREMENTS FOR CITY SERVICE CONTRACTS AND CITY EMPLOYEES", OF ARTICLE VI, ENTITLED "PROCUREMENT", OF CHAPTER 2 OF THE MIAMI BEACH CITY CODE ENTITLED "ADMINISTRATION", BY ESTABLISHING A LIVING WAGE REQUIREMENT FOR CITY SERVICE CONTRACTS AND ESTABLISHING A LIVING WAGE FOR CITY EMPLOYEES; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach awards private firms contracts to provide services for the public. The City also provides financial assistance to promote economic development and job growth. Such expenditures of public money also serve the public purpose by creating jobs, expanding the City's economic base, and promoting economic security for all citizens; and

WHEREAS, such public expenditures should be spent only with deliberate purpose to promote the creation of full-time, permanent jobs that allow citizens to support themselves and their families with dignity. Sub-poverty level wages do not serve the public purpose. Such wages instead place an undue burden on taxpayers and the community to subsidize employers paying inadequate wages by providing their employees with social services such as health care, housing, nutrition, and energy assistance. The City has a responsibility when spending public funds to set a community standard that permits full-time workers to live above the poverty line. Therefore, contractors and subcontractors of City service contracts should pay their employees nothing less than the living wage herein described; and

WHEREAS, in addition to requiring living wages for City services provided by private firms, the City wishes to serve as an example by providing a living wage to all City employees.

NOW, THEREFORE, BE IT DULY ORDAINED BY THE MAYOR AND THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA AS FOLLOWS:

SECTION 1.

That Division 6, to be entitled "Living Wage Requirements for City Contracts", of Article VI, entitled "Procurement", of Chapter 2 of the Miami Beach City Code entitled "Administration" is hereby created to read as follow:

Chapter 2
ADMINISTRATION

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Article VI. Procurement

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Division 6. Living Wage Requirements for Service Contracts and City Employees

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Section 2-407. ~~Reserved~~ Definitions

(a) "City" means the government of Miami Beach or any authorized agents, any board, agency, commission, department, or other entity thereof, or any successor thereto.

(b) "Covered Employee" means anyone employed by the City or any Service Contractor, as further defined in this Division, either full or part time, as an employee with or without benefits or as an independent contractor.

(c) "Covered Employer" means the City and any and all Service Contractors, whether contracting directly or indirectly with the City, and subcontractors of a Service Contractor.

(d) "Service Contractor" is any individual, business entity, corporation (whether for profit or not for profit), partnership, limited liability company, joint venture, or similar business who is conducting business in Miami Beach, or Miami Dade County, and meets one (1) of the two (2) following criteria:

(1) The Service Contractor is:

(a) paid in whole or part from one or more of the City's general fund, capital project finds, special revenue funds, or any other funds either directly or indirectly, whether by competitive bid process, informal bids, requests for proposals, some form of solicitation, negotiation, or agreement, or any other decision to enter into a contract; or

(b) engaged in the business of, or part of, a contract to provide, a subcontract to provide, or similarly situated to provide, services, either directly or indirectly for the benefit of the City. However, this does not apply to contracts related primarily to the sale of products or goods.

(e) "Covered Services" are the type of services purchased by the City that are subject to the requirements of this Division which include the following:

(1) City Service Contracts

Contracts involving the City's expenditure of over \$100,000 per year and which include the following types of services:

(1) food preparation and/or distribution;

(2) security services;

(3) routine maintenance services such as custodial, cleaning, computers, refuse removal, repair, refinishing, and recycling;

- (4) clerical or other non-supervisory office work, whether temporary or permanent;
- (5) transportation and parking services;
- (6) printing and reproduction services;
- (7) landscaping, Lawn, and or agricultural services; and
- (8) park and public place maintenance

(2) Should any services that are being performed by City Employees at the time this ordinance is enacted be solicited in the future by the City to be performed by a Service Contractor, such services shall be Covered Services subject to this Division.

SECTION 2-408. Reserved LIVING WAGE

(a) Living Wage Paid.

(1) Service Contractors.

All Service Contractors, as defined by this Division, entering into a contract with the City of Miami Beach shall pay to all its employees who provide services covered by this Division, a living wage of no less than \$8.56 an hour with health benefits, or a living wage of not less than \$9.81 an hour without health benefits, as described in this Section.

(2) City Employees.

For City Employees under the City pay plan, the City will begin to pay a living wage consistent with the goals and terms of this Division on phase-in basis beginning in the 2001-2002 City budget year, increasing on an annual basis incrementally so that the Living Wage is fully implemented for City employees in the 2003-2004 City budget year as may be adjusted pursuant to subsection (c) below. Thereafter, the Living Wage to be paid by the City to its employees shall not be subject to the annual indexing using the Consumer Price Index for all Urban Consumers (CPI-U) required under subsection (c) below and instead shall be subject to negotiations within the collective bargaining structure.

(b) Health Benefits. For a Covered Employer or the City to comply with the living wage provision by choosing to pay the lower wage scale available when a Covered Employer also provides health benefits, such health benefits shall consist of payment of at least \$1.25 per hour towards the provision of health care benefits for Covered Employees and their dependents. If the health benefits plan of the Covered Employer or the City requires an initial period of employment for a new employee to be eligible for health benefits (eligibility period) such Covered Employer or City may qualify to pay the \$8.56 per hour wage scale during the new employee's initial eligibility period provided the new employee will be paid health benefits upon completion of the eligibility period. Proof of the provision of health benefits must be submitted to the awarding authority to qualify for the wage rate for employees with health benefits.

(c) Indexing. The living wage will be automatically indexed each year using the Consumer Price Index for all Urban Consumers (CPI-U) unless the City Commission determines it would not be fiscally sound to implement the CPI-U in a particular year.

(d) Certification Required Before Payment. Any and all contracts for Covered Services shall be void, and no funds may be released, unless prior to entering any agreement with the City for a Covered Services contract, the employer certifies to the City that it will pay each of its employees no less than the living wage described in Section 2-408 (a). A copy of this certificate must be made available to the public upon request. The certificate, at a minimum, must include the following:

- (1) the name, Address, and phone number of the employer, a local contact person, and the specific project for which the Covered Services contract is sought;**
- (2) the amount of the Covered Services contract and the City Department the contract will serve;**
- (3) a brief description of the project or service provided;**
- (4) a statement of the wage levels for all employees; and**
- (5) a commitment to pay all employees a living wage, as defined by paragraph Section 2-408 (a).**

(e) Observation of Other Laws. Every Covered Employee shall be paid not less than biweekly, and without subsequent deduction or rebate on any account (except as such payroll deductions as are directed or permitted by law or by a collective bargaining agreement). The Covered Employer shall pay Covered Employees wage rates in accordance with federal and all other applicable laws such as overtime and similar wage laws.

(f) Posting. A copy of the living wage rate shall be kept posted by the Covered Employer at the site of the work in a prominent place where it can easily be seen and read by the Covered Employees and shall be supplied to the employee within a reasonable time after a request to do so. Posting requirements will not be required where the Covered Employer prints the following statements on the front of the Covered Employee's first paycheck and every six months thereafter: "You are required by City of Miami Beach law to be paid at least \$8.56 dollars an hour. If you are not paid this hourly rate, contact your employer, an attorney, or the City of Miami Beach." All notices will be printed in English, Spanish, and Creole.

(g) Collective Bargaining. Nothing in this Division shall be read to require or authorize any Covered Employer to reduce wages set by a collective bargaining agreement or are required under any prevailing wage law.

SECTION 2-409. Reserved-

IMPLEMENTATION

(a) Procurement Specifications. The living wage shall be required in the procurement specifications for all City service contracts for Covered Services on which bids or proposals shall be solicited on or after the effective date of this Division. The procurement specifications for applicable Covered Services contracts shall include a requirement that Service Contractors and their subcontractors agree to produce all documents and records relating to payroll and compliance with this Division upon request from the City. All Covered Service contracts awarded subsequent to the date when this Division becomes effective, shall be subject to the requirements of this Division.

(b) Information Distributed. All requests for bids or requests for proposals for Covered Services contracts of \$100,000 or more shall include appropriate information about the requirements of this Division.

(c) Maintenance of Payroll Records. Each Covered Employer shall maintain payrolls for all Covered Employees and basic records relating thereto and shall preserve them for a period of three (3) years or the term of the Covered Services contract, whichever is greater. The records shall contain:

- (1) the name and address of each Covered Employee;
- (2) the job title and classification;
- (3) the number of hours worked each day;
- (4) the gross wages earned and deductions made;
- (5) annual wages paid;
- (6) a copy of the social security returns and evidence of payment thereof;
- (7) a record of fringe benefit payments including contributions to approved plans; and
- (8) any other data or information this Division should require from time to time.

(d) Reporting Payroll. Every six (6) months, the Covered Employer shall file with the Procurement Director a complete payroll showing the Covered Employer's payroll records for each Covered Employee working on the contract(s) for Covered Services for one payroll period. Upon request from the City, the Covered Employer shall produce for inspection and copying its payroll records for any or all of its Covered Employees for any period covered by the Covered Service contract. The City may examine payroll records as needed to ensure compliance.

SECTION 2-410. Reserved

COMPLIANCE AND ENFORCEMENT.

(a) Service Contractor to Cooperate. The Service Contractor shall permit City employees, agents, or representatives to observe work being performed at, in or on the project or matter for which the Service Contractor has a contract. The City representatives may examine the books and records of the Service Contractor relating to the employment and payroll to determine if the Service Contractor is in compliance with the provisions of this Division.

(b) Complaint Procedures and Sanctions.

- (1) An employee who believes that this Division applies or applied to him or her and that the Service Contractor, or the City, is or was not complying with the requirements of this Division has a right to file a complaint with the Procurement Director of the City. Complaints by employees of alleged violations may be made at any time and shall be investigated within thirty (30) days by the City. Written and oral statements by an employee shall be treated as confidential and shall not be disclosed without the written consent of the employee to the extent allowed by the Florida Statutes.
- (2) Any individual or entity may also file a complaint with the Procurement Director of the City on behalf of an employee for investigation by the City.
- (3) It shall be the responsibility of the City to investigate all allegations of violations of this Division within thirty (30) days. If, at any time, the City, upon investigation determines that a violation of this Division has occurred, it shall, within ten (10) working days of a finding of non-compliance, issue a notice of corrective action to the employer specifying all areas of non-compliance and deadlines for resolutions of the identified violations. If a Service Contractor fails to comply with any notice issued, the City Manager or the City Manager's designee may issue an order in writing to the Service Contractor, by certified mail or hand delivery, notifying the Service Contractor to appear at an administrative hearing before the City Manager or the City Manager's designee to be held at a time to be fixed in such order, which date shall be not less than five (5) days after service thereof.
- (4) The proceedings shall be informal, but shall afford the Service Contractor the right to testify in the Service Contractor's own defense, present witnesses, be represented by counsel, submit relevant evidence, cross examine witnesses and object to evidence.
- (5) The proceedings shall be recorded and minutes kept by the City. Any Service Contractor requiring verbatim minutes for judicial review may arrange for the services of a court reporter at the expense of the Service Contractor.
- (6) Within ten (10) days of the close of the hearing, the City Manager or the City Manager's designee shall render a decision in writing determining whether or not the Service Contractor is in compliance, or whether other action should be taken, or whether the matter should be continued, as the case may be, and stating the reasons and findings of fact.
- (7) The City Manager or the City Manager's designee shall file findings with the City Clerk, and shall send a true and correct copy of his order by certified mail, return receipt requested, or by hand delivery, to the business address as the Service Contractor shall designate in writing.
- (8) The City Manager's or designee's findings shall constitute the final administrative action of the City for purposes of judicial review under state law.

(9) If a Service Contractor fails to seek timely appellate review of an order of the City Manager or the City Manager's designee, or to comply timely with such order, the City may pursue the enforcement of sanctions set forth in Section 2-410 (c).

(c) Private Right of Action Against Service Contractor Any Covered Employee of or former Covered Employee of a Service Contractor may, instead of utilizing the City administrative procedure set forth in this Division, but not in addition to such procedure, bring an action by filing suit against the Covered Employer in any court of competent jurisdiction to enforce the provisions of this Division and may be awarded back pay, benefits, attorney's fees, and costs. The applicable statute of limitations for such a claim will be two (2) years as provided in Florida Statutes Section 95.11(4)(c) for an action for payment of wages. The court may also impose sanctions on the Service Contractor, including those persons or entities aiding or abetting the Service Contractor, to include wage restitution to the affected Covered Employee and damages payable to the Covered Employee in the sum of up to \$500 for each week each Service Contractor is found to have violated this Division.

(d) Sanctions Against Service Contractors. For violations of this Division, the City shall sanction a Service Contractor by requiring the Service Contractor to pay wage restitution at the employers expense for each affected employee and may access the following:

(1) The City may impose damages in the sum of \$500 for each week for each employee found to have not been paid in accordance with this Division; and/or

(2) The City may suspend or terminate payment under the Covered Services contract or terminate the contract with the Service Contractor; and/or

(3) The City may declare the employer ineligible for future service contracts for three (3) years or until all penalties and restitution have been paid in full, whichever is longer. In addition, all employers shall be ineligible under this section where principal officers of the employer were principal officers of an employer who violated this Division.

(e) Public Record of Sanctions. All such sanctions recommended or imposed shall be a matter of public record.

(f) Sanctions for Aiding and Abetting. The sanctions in Section 2-410 (c) shall also apply to any party or parties aiding and abetting in any violation of this Division.

(g) Retaliation and Discrimination Barred. A Covered Employer shall not discharge, reduce the compensation, or otherwise discriminate against any Covered Employee for making a complaint to the City, or otherwise asserting his or her rights under this Division, participating in any of its proceedings or using any civil remedies to enforce his or her rights under this Division. Allegations of retaliation or discrimination, if found true in a proceeding under paragraph (b) or by a court of competent jurisdiction under paragraph (c), shall result in an order of restitution and reinstatement of a discharged Covered Employee with back pay to the date of the violation or such other relief as deemed appropriate.

(h) Enforcement Powers. If necessary for the enforcement of this Division, the City ~~Attorney Commission~~ may issue subpoenas, compel the attendance and testimony of witnesses and production of books, papers, records, and documents relating to payroll records necessary for hearing, investigations, and proceedings. In case of disobedience of the subpoena, the City Attorney may apply to a court of competent jurisdiction for an order requiring the attendance and testimony of witnesses and production of books, papers, records, and documents. Said court, in the case of the refusal to obey such subpoena, after notice to the person subpoenaed, and upon finding that the attendance or testimony of such witnesses or the production of such books, papers, records, and documents, as the case may be, is relevant or necessary for such hearings, investigations, or proceedings, may issue an order requiring the attendance or testimony of such witnesses or the production of such documents and any violation of the court's order may be punishable by the court as contempt thereof.

(i) Remedies Herein Non-Exclusive. No remedy set forth in this Division is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce the rights under this Division in a court of law. This Division shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, subsection, clause, or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be returned.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect on the 28th day of April, 2001.

PASSED and ADOPTED this 18th day of April, 2001.



MAYOR

ATTEST:



CITY CLERK

1st reading _____

2nd reading XX

Ordinance No. 2001-3301

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**



City Attorney 

4-27-01
Date